

FIRE PROTECTION SERVICE AGREEMENT
Between the City of Madison and the Town of Burke

This Fire Protection Service Agreement ("Agreement") is entered into by and between the City of Madison, a Wisconsin municipal corporation located in Dane County, Wisconsin (the "City") and the Town of Burke, a body corporate and politic located in Dane County, Wisconsin (the "Town").

RECITALS

- A. The Village of DeForest, the Town, the City of Sun Prairie, and the City entered into a Cooperative Plan pursuant to Wis. Stats. §66.0307 entitled "Final Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan", dated January 5, 2007 which became effective upon approval by the Wisconsin Department of Administration on May 4, 2007 (the "Cooperative Plan").
- B. Sections 23 And 24.A. of the Cooperative Plan contemplate the possibility of additional intergovernmental agreements adjusting obligations for services between the parties to the Cooperative Plan.
- C. The City and the Town recognize the need to provide fire protection to the residents of the City and the Town.
- D. In 2015, the City and the Town entered into an agreement whereby the City agreed to provide all emergency medical services to the residents of the City and the Town.
- E. The City and Town have determined that each will benefit from entering a long-term intergovernmental cooperation agreement under which the City will provide fire protection services to the Town, and the Town will contribute to the cost of the City's Fire Services budget.
- F. The City and the Town are authorized by Wis. Stat. § 66.0301 to contract with each other for the receipt or furnishing of services.

AGREEMENT

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the City and the Town make this intergovernmental agreement under Wis. Stat. § 66.0301 for the purposes described above and the benefit, health, safety and welfare of the public, and agree as follows:

- 1. Definitions. When used in this Agreement, the following terms shall have the following meanings:
 - A. *Fire Department*. Fire Department means the City of Madison Fire Department.
 - B. *Fire Operations*. Fire Operations means emergency response and non-emergency services for fire, hazardous materials and other disaster responses, and other,

similar services that may be provided by the Fire Department to provide for the protection and preservation of life and property at the same level of service and response as provided within the City.

- C. *Fire Prevention.* Fire prevention means fire safety education, fire inspection, fire protection engineering review, plan review, public information, elevator inspections, and fire/arson investigation services at the same level of service as provided within the City.

- 2. Services to be provided by the City. The City shall provide Fire Operations services beginning on July 1, 2024 (the "Effective Date"). Subject to the conditions in Section 2. B., the City shall provide Fire Prevention services other than fire inspections beginning on the Effective Date, and fire inspection services beginning on the Effective Date.

- A. *Fire Operations.* The City shall provide Fire Operations services within and to all persons and premises within the Town at the same level of service that is provided within and to the City.

- B. *Fire Prevention.* Subject to the conditions specified in this subsection, the City shall provide Fire Prevention services within and to all persons and premises within the Town at the same level of service that is provided within and to the City. The City's obligation to provide Fire Prevention services is subject to the following conditions:

- (1) The City's obligation to provide fire inspection, fire protection engineering review, fire protection plan review, and elevator inspections is contingent upon the Town, to the extent the Town has the authority to do so under Wisconsin law, having fee schedules in effect that conform in kind and amount to the City's fee schedules relating to Fire Prevention, and having ordinances in effect that conform to Madison General Ordinances Chapters 34 and 40 and any other City ordinance (and all subsequent amendments and additions) relating to Fire Prevention, and upon the Town authorizing the Chief of the Madison Fire Department or the Chief's designee to issue official notices or orders to correct violations, and to issue citations or commence other ordinance enforcement actions for violations of Town ordinances relating to fire prevention.
- (2) The City's obligation to provide elevator inspection services and fire protection plan review is further contingent upon the City and Town securing an agreement with the State of Wisconsin authorizing the City to provide elevator inspection services and fire protection plan review in the Town. The City and Town shall cooperate to secure such agreement(s) with the State of Wisconsin.
- (3) The City shall give written notice to the Town of all City fees and ordinances that must be adopted by the Town to satisfy the conditions in this Section. The City shall also provide written notice to the Town of any changes to City fees and ordinances that must be adopted by the Town to satisfy the conditions in this Section.

- (4) When adopting Madison General Ordinance (MGO) Section 34.5601, both parties agree that the Town may exempt any retail store that is in existence as of January 1, 2024, from being in compliance with MGO Section 34.5601(1), provided that all retail sales are in compliance with Wis. Stat. Sec. 167.10.

- C. *Education and Information.* The City shall provide community education, fire prevention and fire safety information for the Town when reasonably requested and when available, and through existing resources and services.
- D. *Fuel Tanks.* The City shall provide fuel tank inspections and plan review services of above ground tank systems in excess of 60 gallons and less than 5000 gallons not regulated by SPS 310.

3. Town Responsibilities.

- A. *Code Enforcement.* The Town shall have the responsibility and the authority to prosecute or otherwise resolve citations or other ordinance enforcement actions issued or commenced by the City for alleged violations of fire prevention ordinances listed in Section 2.B.(1) occurring in the Town. The Town, to the extent that it has the authority to do so under Wisconsin law, shall adopt fee schedules in effect that conform in kind and amount to the City's fee schedules relating to Fire Prevention, and adopt ordinances in effect that conform to Madison General Ordinances Chapters 34 and 40 and any other City ordinance (and all subsequent amendments and additions) relating to Fire Prevention. Further the Town shall authorize the Chief of the Madison Fire Department or the Chief's designee to issue official notices or orders to correct violations, and to issue citations or commence other ordinance enforcement actions for violations of Town ordinances relating to fire prevention
- B. *Knox Box Keys.* The Town shall pay for the costs for the City to re-core all existing Knox Box Keys by the Effective Date to the same key used by the Fire Department. All Knox Boxes or similar key boxes put in service or repaired after the Effective Date of this Agreement shall be keyed to conform to the Madison Fire Department's keys.
- C. *Public Fire Protection Infrastructure.*
- (1) Any fire hydrants owned by the Town shall be maintained by the Town according to National Fire Protection Association (NFPA) standards. Fire hydrants that are temporarily out of service shall have a black plastic bag secured over the bonnet and barrel and the Fire Department will be notified of water supply and hydrant outages. When the Town has been notified of a fire hydrant in need of repair, the Town shall within one month, insure that said fire hydrant is repaired and operational. As of the Effective Date, the Town does not own any fire hydrants, as all of the fire hydrants are owned by other municipalities.

- (2) New fire hydrants that are installed within the Town shall be in accordance with Madison General Ordinance Sec. 34.507 (and all subsequent amendments and modifications).

4. Fee for City Services.

- A. *Fee Schedule.* For City services to be provided under this Agreement, the Town shall pay the City ninety thousand dollars (\$90,000) for services provided from July 1, 2024 through December 31, 2024, based on an annual rate of one hundred eighty thousand dollars (\$180,000). Beginning January 1, 2025, and on January 1 of subsequent years, the fee for City services shall be adjusted annually based upon the higher amount of the wage increase provided in the City's Local 311 Contract or the Consumer Price Index ("CPI"), using the U.S. Department of Labor, Bureau of Labor Statistics (BLS) data for All Urban Consumers, U.S. city average, not seasonally adjusted 1982-84 = 100.

The Town's payments for a given year shall be paid in quarterly installments by January 1, April 1, July 1, and October 1 of the given year. The City shall provide the Town with an invoice for each quarterly payment at least thirty (30) days before each quarterly payment is due. Payment shall be made to:

City Treasurer – City of Madison
210 Martin Luther King, Jr., Blvd.
Room 403
Madison, WI 53703

If the Town does not pay by the due date, the City shall provide the Town written notice of breach and ten (10) business days to cure. If the Town fails to cure by remitting full payment within ten (10) business days from the date of the notice, the City may terminate this Agreement or impose a late fee of one percent (1%) of the amount owed.

B. *Payment Schedule and Invoice.*

- (1) The Town shall collect, charge, and provide to the City all fees the Town collects on behalf of the City for fire inspection, fire protection engineering, fire-related plan review, elevator inspections and other Fire Operations and Fire Prevention related services performed by the City, at the same rates charged within the City, unless such fees were charged directly to the recipient of the service and paid directly to the City. When collected, the Town shall provide these fees to the City within thirty (30) days.
- (2) The Town shall provide to the City dues received by the Town from the State of Wisconsin relating to fire entitlement dues as authorized under Wis. Stats. § 101.575 (and all subsequent amendments/additions). The Town shall comply with all fire dues distribution audit reports and associated documentation required under Wis. Stats. § 101.573 (and all subsequent amendments/additions). When received, the dues shall be provided to the City within thirty (30) days.

- (3) If the City or Town is authorized by law to receive a payment or payments from another governmental entity, for Fire Operations or Fire Prevention Services, the City and Town shall cooperate in applying for such payment or payments. If the Town is eligible by law to retain the reimbursements or dues by virtue of paying for Fire Operations or Fire Prevention Services provided in the Town pursuant to this Agreement, then the Town may retain such reimbursement or dues. If the Town is required by law to appropriate the payment to the agency that is providing the Fire Operations or Fire Prevention Services, then the payment shall be paid to the City within thirty (30) days of receipt.

5. Special Assessments.

- A. The Parties recognize that after the Effective Date of this Agreement, the City may, from time to time, find that it is necessary to impose special charges for current services under Madison General Ordinances Sec. 4.09 and Wis. Stats. § 66.0627 (and all subsequent amendments and additions) against the Town properties provided fire protection services by the City under this Agreement. Any special charges under this Section shall be imposed upon and collected from Town property owners in the same manner as properties in the City, and shall not in any respect discriminate against Town properties because they are in the Town. Town property owners shall have all the same protections and rights as property owners in the City subject to the same special charges. The Town approves such future charges under Wis. Stats. § 66.0707 and the Town's resolution approving this Agreement constitutes the Town's resolution required by § 66.0707. In the event that this blanket pre-approval provision is invalidated by a court of competent jurisdiction, the Town further agrees to the extent that it may lawfully do so, that it shall timely, approve such special charge by separate resolution pursuant to said statute.
- B. The City shall not impose any special charge against any property in the Town based upon any cost that is included in the City Fire Operating Budget or the City Fire Debt Service Payment.
- C. Before imposing any special charge against any property in the Town, the City shall notify the Town of such special charge. The Town may elect to pay any proposed special charge and if the Town elects to pay a special charge, the special charge shall not be imposed upon the property in the Town.

6. Operational Policy. Operational policy for providing Fire Operations and Fire Prevention services under this Agreement shall be established by the City, and the City shall have the responsibility for implementation of all policies adopted.
7. Operational Personnel. The personnel providing Fire Operations and Fire Prevention services under this Agreement shall be employees of the City, and are not agents or employees of the Town. The City shall be solely responsible for paying all wages, benefits, disability payments, and pension and worker's compensation claims for City

employees providing services under this Agreement, and for damage to City equipment and clothing used in providing services under this Agreement.

8. Liability. Each party shall be responsible for the consequences of its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall be responsible only for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and, commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stats. § 893.80 or any other protections available to the parties by law.
9. Effective Date, Term, Renewal of this Agreement. Effective Date and Term of this Agreement. This Agreement shall be effective beginning on the Effective Date, and, unless terminated sooner under provisions elsewhere in this Agreement, shall be in effect until final attachment of all Town lands under the Cooperative Plan.
10. Termination.
 - A. *Termination by Agreement.* The parties may agree in writing to terminate this Agreement at any time.
 - B. *Termination for Cause.* If either party shall commit a breach of, or fail to timely and properly fulfill any obligation under this Agreement, other than late payment as described in Sec.4.A, the nonbreaching party shall provide the breaching party written notice thereof providing thirty (30) days from the date of receipt of the notice to cure. If the breach is not cured within the thirty (30) days, the nonbreaching party retains all available rights at law and equity, including but not limited to the immediate termination of this Agreement and all rights of the breaching party, suit for damages, and specific performance. If due to the nature of the breach it cannot be cured within thirty (30) days from the receipt of notice, then the breaching party shall be deemed to be complying with the notice to cure, if promptly upon receipt of such notice the breaching party takes steps to cure the breach as soon as reasonably possible and proceeds thereafter with due diligence to cure the breach within a period of time which, under all the circumstances, shall be reasonable.
 - C. This Agreement will terminate in the event that the City of Madison no longer provides Fire Operations services within the City.
 - D. *Effect of Termination.* If this Agreement is terminated for any reason, the Town's payment(s) due to the City shall be pro-rated through the effective date of the termination.
11. Change in Law / Severability. If Section 2 or Section 4 of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable and there is no further right to appeal such holding, or if there is a change in state or federal law that renders Section 2 or Section 4 illegal or otherwise unenforceable, this Agreement shall terminate.

If any part, term, or provision of this Agreement other than Section 2 or Section 4 is held by a court of competent jurisdiction to be illegal or otherwise unenforceable or is rendered illegal or otherwise enforceable by a change in state or federal law, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term or provision was never part of the Agreement.

12. Force Majeure. "Force Majeure" shall mean an event or circumstance beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure. It shall include a failure or interruption in the provision of services due to an act of God; war; sabotage; riot; insurrection; civil unrest or disturbance; explosion, earthquake; flood or other abnormal weather condition. An event of Force Majeure that prevents the City from providing Fire Operations service or Fire Prevention service shall excuse the City from providing such service until the event of Force Majeure no longer prevents the City from providing such service.
13. Conflict Resolution. The City and the Town pledge their good faith to resolve any concerns or disputes that arise regarding their respective obligations. Any potential misunderstandings or disputes that are not resolved by Town and Fire Department staff shall be addressed by a group consisting of the Mayor of the City, the Town Chair, the Fire Chief, and any staff members and legal counsel requested by either party. Either party may at any time request a meeting with the other party to discuss a concern relating to this Agreement. Nothing in this section is intended to prevent either party from seeking any remedy available to it under this Agreement from a court of competent jurisdiction in Dane County, Wisconsin as described in Section 19.
14. Non-Discrimination. During the term of this Agreement, the Town agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Town further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

15. Notices. All notices to be given shall be in writing and delivered by personal delivery or by Certified United States mail, as follows:

To the City of Madison: City of Madison Clerk
210 Martin Luther King, Jr., Blvd., Room 103
Madison, WI 53703

With a copy to: Madison City Attorney
210 Martin Luther King, Jr., Blvd., Room 401
Madison, WI 53703

To the Town: Town Clerk/Treasurer
5365 Reiner Road
Madison WI 53718

with copy to: Town of Burke Attorney
Stafford Rosenbaum LLP
222 West Washington Ave., Suite 900
Madison WI 53703

Either party may change the names and addresses for giving notice to such party by delivering written notice of such change or changes to the other party.

16. Entire Agreement. This Agreement, including any and all addenda, exhibits and the like attached hereto, sets forth the entire agreement between the City and the Town regarding the City's provision of Fire Operations and Fire Prevention services to the Town, and supersedes any prior discussions, agreements or understandings, either written or oral.
17. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Town shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Town therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
18. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction in Dane County, Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

19. No Third Party Beneficiaries. This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of the Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any person who is not a party hereto, including but not limited to employees of either party.
20. Amendment / Modification. This Agreement may be amended or modified only by written amendment approved and executed by the Town and the City.
21. Binding Effect / Assignment. The parties have entered into this Agreement under the authority of Wis. Stats. § 66.0301. Neither party may assign its obligations hereunder to any third party without the prior written consent of the other party, which consent may be granted, withheld, or conditioned in the party's sole discretion. Subject to the foregoing, the parties agree that this Agreement shall be binding upon and inure to the benefit of both parties, as well as their respective heirs, successors and assigns.
22. Construction. The parties acknowledge that this Agreement is the product of negotiations between the parties and that, prior to the execution hereof, each party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against any party because that party's attorney drafted this Agreement or any part hereof.
23. Authority. Each party represents that it has the authority to enter into the Agreement and that all necessary procedures have been followed to secure authorization to enter into this Agreement from the party's respective governing body. Each person signing the Agreement represents and warrants that he or she has been duly authorized to do so.
24. Counterparts, Electronic Signature and Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers as of the date when all parties hereto have affixed their respective signatures.

TOWN of BURKE:

Attest: _____
P.J. Lentz, Town Administrator/Clerk/Treasurer

By: _____
(Signature)
Kevin Viney, Town Chair
(Print Name and Title of Person Signing)

Date: _____

**CITY OF MADISON, WISCONSIN
a municipal corporation:**

By: _____
Satya Rhodes-Conway, Mayor

Date: _____

Approved:

David P. Schmiedicke, Finance Director
Date: _____

By: _____
Maribeth Witzel-Behl, City Clerk
Date: _____

Approved as to Form:

Eric T. Veum, Risk Manager
Date: _____

Michael Haas, City Attorney
Date: _____